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09/763,723	02/27/2001	Helen Biddiscombe	4661300006	3720

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/763,723

Applicant(s)

BIDDISCOMBE, HELEN

Examiner

Christopher P. Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-5,8,9,12,13,15-17,20-27 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-5,8,9,12,13,15-17,20-27 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

**WITHDRAWN REJECTIONS**

1. The 35 U.S.C. 112 rejections of claims 2-5, 8-9, 12-13, 15-17, and 20 of record in the Office Action mailed June 7, 2005, Pages 3-4 Paragraph 4, have been withdrawn due to Applicant's arguments in the Paper filed October 12, 2005.

2. The 35 U.S.C. 102 rejections of claims 21-25 and 29 as anticipated by Leatherman et al of record in the Office Action mailed June 7, 2005, Pages 4-6 Paragraph 5, have been withdrawn due to Applicant's arguments and affidavit filed October 12, 2005.

3. The 35 U.S.C. 103 rejections of claims 2-5, 9, 13, and 15-17 over Leatherman et al of record in the Office Action mailed June 7, 2005, Pages 7-9 Paragraph 6, have been withdrawn due to Applicant's arguments and affidavit filed October 12, 2005.

4. The 35 U.S.C. 103 rejections of claims 8, 12, 20, and 26-27 over Leatherman et al in view of Takagaki of record in the Office Action mailed June 7, 2005, Pages 9-10 Paragraph 7, have

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been withdrawn due to Applicant's arguments and affidavit filed October 12, 2005.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 2-5, 9, 13, 15-17, 21-25, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balaji et al (USPN 6,726,969) in view of Yamanaka et al (USPN 5,332,542).

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Regarding claims 2-5 and 13, Balaji et al teach an in-mold labeled, blow molded article (see abstract and col.1, 1.30-42). The label is formed from a laminate comprising a core layer or base layer composed of polypropylene homopolymers (col.7, 1.16-20) and an outer layer or heat sealable layer (see abstract). The polypropylene is a biaxially oriented voided film (col.8, 1.38-44). The film has a shrinkage of less than about 6% in both the machine and transverse directions since the film is biaxially oriented (col.4, 1.11-14), which includes shrinkage values greater than 6%. Depending on the amount of voids produced within the voided film, the film would obviously have a density of 0.8g/cm<sup>3</sup> or more since the density of the polypropylene is about 0.89g/cc before the voids are produced (col.7, 1.35-42) and the polypropylene is mixed with fillers having a greater density (col.7, 1.45-65). Regarding claims 9 and 16-17, the film comprises at least one intermediate polyolefin layer on the base layer and an outer layer on the intermediate layer, when the core layer is formed of multiple layers of polyolefin (col.6, 1.66-67). Regarding claim 15, the base or core layer comprises filler such as a pigment (col.7, 1.45-46) and/or a voiding agent (col.9, 1.39-44). Regarding claims 21-25, the claims require all of the same limitations as discussed above with regard to claims 2-5, 13, and 15, and

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requires that the void-creating filler disposed in the polypropylene homopolymers be selected from the group consisting of chalk and organic polymers, which are all taught as void creating fillers in Balaji et al (col.9, 1.39-60). Regarding claim 29, the claim requires all of the same limitations as discussed above with regard to claims 13 and 15, and requires the heat sealable layer be adhered to the container, which is the case in Balaji et al (see abstract).

Balaji et al fail to teach that the blow molded plastic container comprising the in-mold label taught is formed from high-density polyethylene. However, Balaji et al teach that the heat seal layer is formed to be compatible with the container the in-mold label is adhered and gives examples of the material used to form the container, including polypropylene and polyethylene terephthalate (col.5, 1.66 - col.6, 1.2). Yamanaka et al teach that it is well known in the art to form blow-molded containers having in-mold labels from either polypropylene or high-density polyethylene (col.4, 1.43-45). Yamanaka et al teach that the in-mold label used to adhere to the polypropylene or high-density polyethylene containers are formed from the same type of multi-layer laminate structure taught in Balaji et al including a heat-sealable layer (col.4, 1.43-52). One of ordinary skill in the art would have recognized that in-mold

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labels having a voided polypropylene core layer and a heat sealable layer are used in labeling polypropylene containers as well as high-density polyethylene containers, as taught by Yamanaka et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to select high density polyethylene as the material for forming the blow-molded container comprising the in-mold label taught in Balaji et al, depending on the intended end result of the container, since it is well known that polypropylene and high-density polyethylene containers are interchangeable and that the in-mold label having the structure of Balaji et al is used on both types of containers, as taught by Yamanaka et al.

6. Claims 8, 12, 20, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balaji and Yamanaka et al as applied to claims 9, 13 and 21 above, and further in view of Takagaki (USPN 5,078,817).

Balaji and Yamanaka et al teach all that is claimed in claims 9, 13, and 21 as shown above, but fail to teach adding a hydrogenated hydrocarbon resin to the base and/or intermediate layers. However, Takagi teaches that hydrogenated hydrocarbon resins are used in the layers of shrinkage labels, in order to

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enable the shrinking power of the film to occur uniformly so that deformation of the label does not occur (col.5, 1.9-20). One of ordinary skill in the art would have recognized that hydrogenated hydrocarbon resins are added to the layers of labels having shrinkage, in order to uniformly distribute the shrinking power of the film so that deformation of the label does not occur, as taught by Takagi.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to add the hydrogenated hydrocarbon resins of Takagi to the base layer and intermediate layer of Leatherman et al in order to prevent deformation of the label, as taught by Takagi.

#### ***Response to Amendment***

7. The affidavit under 37 CFR 1.132 filed October 12, 2005 is sufficient to overcome the rejection of claims 2-5, 8-9, 12-13, 15-17, 20-27, and 29 based upon 35 U.S.C. 102 and 35 U.S.C. 103, because the affidavit provides sufficient evidence that a microporous film such as the film of Leatherman et al is not a voided film as claimed in the instant application.



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***ANSWERS TO APPLICANT'S ARGUMENTS***

8. Applicant's arguments regarding the 35 U.S.C. 112 rejections of record have been considered but are moot since the rejections have been withdrawn.

9. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 21-25 and 29 as anticipated by Leatherman et al have been considered but are moot since the rejections have been withdrawn.

10. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 2-5, 9, 13, and 15-17 over Leatherman et al have been considered but are moot since the rejections have been withdrawn.

11. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 8, 12, 20, and 26-27 over Leatherman et al in view of Takagaki have been considered but are moot since the rejections have been withdrawn.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Moseley, III

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(USPN 6,228,316); Crighton et al (USPN 5,527,601); Balaji et al (USPN 6,150,013); Kitamura et al (USPN 6,238,785); Davidson et al (USPN 6,444,301).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Christopher P Bruenjes

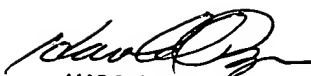
Examiner

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CPB

November 17, 2005

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

11/18/05